THE HON'BLE MR JUSTICE V.V.S.RAO

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WRIT PETITION No.1083 of 2006

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24.01.2006

Between:

M/s.Anand Granite Exports (P) Ltd., Santhapet, Ongole

... Petitioner

AND

The Secretary, Government of Andhra Pradesh,

Industries and Commerce (Mines-II) Department,

Secretariat, Hyderabad

And another

...Respondents

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION No.1083 of 2006

ORDER:

The petitioner was granted mining lease for black (Galaxy) granite in 1991 for a period of five years over an extent of Acs.4.38 in survey Nos.104/1, 5 to 7 of R.L.Puram. The same was renewed for a period of twenty years with effect from 27.11.1996 by proceedings dated 05.12.2001 issued by the competent authority, the second respondent herein, namely, the Director of Mines and Geology (DMG). On 07.12.2004, the DMG issued a show cause notice to determine the lease on various grounds. The petitioner submitted explanations on 08.12.2004 and 27.12.2004. After considering the explanation, by order dated 19.05.005, the DMG determined the lease and forfeited the security deposit to Government of Andhra Pradesh (GoAP), the first respondent herein. The petitioner preferred an appeal under Rule 35-A of A.P.Minor Mineral Concession Rules, 1966 (the Rules, for brevity) and the same was dismissed on 20.01.2006. Against the orders of GoAP dated 20.01.2006, the present writ petition is filed.

The case of the petitioner in brief may be noticed as under. After obtaining the lease in 1991, the petitioner carried on quarry operations for five years. But the renewal was rejected by DMG on the ground that the petitioner company failed to produce

dues clearance certificates of its sister concerns having quarries in Warangal and Karimnagar. Against this, the petitioner approached the Government without any success. He filed W.P.No.31174 of 1997. Later, he also approached the Government by making representation. The Government directed DMG to renew the lease. The proceedings were issued on 05.12.2001 renewing the lease with effect from 27.11.1996 for a period of twenty years upto 26.11.2016. The petitioner allegedly had been carrying on mining operations, as per approved mining plan, duly paying mineral taxes. In March 2003, one
M/s Pallava Granite Limited (PGL) filed an application being O.A.No.256 of 2003 on the file of the High Court of Judicature at Madras, under the provisions of Arbitration and Conciliation Act, 1996 (the Act, for brevity), praying for interim injunction restraining the petitioner from either quarrying or removing granite blocks from the land leased to the petitioner. Madras High Court injuncted the petitioner from removing granite blocks from the quarry land and subsequently on 10.12.2004, the matter was disposed of as settled out of Court. In view of the prohibitory orders of Madras High Court and also as directed by the officials of the Mining Department, the petitioner, it is alleged, could not quarry granite. It is also alleged that even before High Court of Madras passed injunction orders, the petitioner applied for dispatch permits for removal of 173.43 cubic meters of granite, which had been extracted orally.

The DMG issued a show cause notice, dated 07.12.2004, determining the lease alleging that the petitioner did not obtain dispatch permits since the date of lease, that the petitioner is not conducting quarrying operations since the date of execution of first renewal quarry lease and that the petitioner did not submit approved mining plan. The petitioner submitted an explanation on 27.12.2004 bringing to the notice of DMG about the pendency of the case against the petitioner on the file of High Court of Madras. Though the petitioner requested the third respondent to measure the blocks and issue dispatch permits but the request was not considered in view of the show cause notice. Ultimately by proceedings dated 19.05.2005, DMG determined the lease. Aggrieved by the same, an appeal was filed before the GoAP. The same was examined by the first respondent on two occasions but no orders were passed. In the meanwhile, the petitioner came to know that the fourth respondent applied for grant of quarry lease in respect of the same land and making efforts for obtaining the lease in its favour. The petitioner, therefore, filed writ petition being W.P.No.11751 of 2005 questioning the inaction of GoAP. By order dated 02.06.2005, this Court directed to dispose of the appeal within four weeks. In July 2005, the fourth respondent filed an application to implead in the appeal. Thereafter, the matter was heard by the Hon'ble Minister for Mines and Geology and orders were reserved on 22.10.2005. The petitioner asserts that after obtaining dispatch permits petitioner removed 176.60 cubic meters of granite and that the granite removed pursuant to the dispatch permits is the granite quarried after grant of renewal in the year 2002 and prior to grant of interim injunction of 05.03.2003. Be that as it is, the first respondent by a Memo dated 20.01.2006 confirmed the orders of the DMG.

The learned senior counsel, Sri S.Venkata Reddy, appearing for the petitioner submits that the impugned order passed by the Government is vitiated by *mala fide*

exercise of power. He would urge that even while the application made by petitioner was pending, the Government accepted the implead application filed by the fourth respondent and determined the lease against the petitioner only to help the fourth respondent to procure the lease. Secondly, it is the contention of the senior counsel that the grounds on which the lease was determined by DMG and GoAP are non-existent and therefore the impugned order was passed for extraneous reasons, which is unsustainable in law. Thirdly, he would urge that the DMG passed orders determining the lease on grounds about which the petitioner was not put on notice and therefore it is unfair and violative of principles of natural justice.

It is not denied before this Court that a person who obtains a lease for mining the mineral in accordance with the Rules is required to quarry the mineral and if for any reason the lessee fails to quarry for more than six months, the lease is liable to be cancelled as per Rules 17 and 31(xiii) of the Rules. These read as under.

> **17. Lapsing of leases**:- (1) Subject to the other conditions in this rule, where quarrying operations are not commenced within a period of six months from the date of execution of the lease or is discontinued for a continuous period of six months after commencement of such operations or the payments as required under Clause (iv) of Rule 31 are not made, the Deputy Director shall by an order, declare the quarry lease as lapsed and communicate the decision to the lessee.
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> (2) Where the lessee is unable to commence the quarrying operations within a period of six months from the date of execution of the lease or discontinued quarrying operations for a period of six months for reasons beyond his control, he may submit an application to the Director explaining the reasons for the same at least 30 days before the expiry of such period.
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> (3) Every application under sub-rule (2) shall be accompanied by a fee of Rs.500/-.
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> (4) The Director may on receipt of application made under sub-rule (2) and on being satisfied about the adequacy and genuineness of the reasons for the non-commencement of the quarrying operations or discontinuation thereon, pass an order extending or refusing to extend the period of the lease.
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> (5) The Director may condone, the delay in submission of the application under sub-rule (2) before the lapse of the lease.

> **31. Conditions of permit or lease:-** Every quarry lease shall, in addition to such conditions as may be specifically stipulated in each case, be subject to the following conditions, viz.-
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> i. to (xii) omitted
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> xiii. If the lessee stops to work the quarry without the prior sanction of the Assistant Director for a continuous period of six months, the lease granted for quarrying shall be liable to be cancelled.
>
> xiv. to (xx) omitted.

Admittedly, the petitioner did not carry on quarrying operations from March 2003. The petitioner asserts that though the Madras High Court prohibited lifting and removing the quarried granite blocks, it was advised not to undertake any quarrying operations and that is the reason for not quarrying during the period from 05.03.2003 to 10.12.2004. The period of non-operation is more than six months and therefore the two Rules read above squarely apply to the case. If, for any reason, a lessee does not commence quarrying operations within a period of six months from the date of the lease or is compelled to stop quarrying operations, such lessee has to submit application to the Director explaining the reasons for the same at least thirty days before the expiry of such period. Indeed, as per Rule 31(xiii) of the Rules, if a lessee stops working of the quarry without sanction for continuous period of six months, the lease granted for quarrying shall be liable to be cancelled. At no point of time, the petitioner approached the DMG as required under Rule 17(2) of the Rules. Keeping this in view, the DMG issued show cause notice on 07.12.2004 pointing out the contravention that the petitioner did not obtain any dispatch permits since the date of execution of the quarry lease deed that did not conduct quarry operations since the date of execution of first renewal of quarry lease and that the petitioner did not submit approved mining plan, which is violation of Rule 17(1) of the Granite Conservation and Development Rules, 1999. It is only thereafter the petitioner sent a communication on 08.12.2004 brining to the notice of the Assistant Director of Mines and Geology (not to DMG) informing that quarrying operations are temporarily stopped pursuant to interim injunction in O.A.No.256 of 2003. In their explanation, dated 27.12.2004, the petitioner admitted the lapses on their part. Regarding the first and second allegations, the petitioner stated that the Company faced difficulties in quarrying during the first five years and therefore they did not carry on quarrying operations and after grant of first renewal by proceedings, dated 05.12.2001, with effect from 27.11.1996. They invested more than ten lakhs to make the land suitable for quarrying and successfully quarried black galaxy granite blocks and even before they could apply for dispatch permits, Madras High Court passed an injunction order against them. Regarding the third allegation, the petitioner admitted that due to ignorance of law, they could not submit mining plan for approval under Rule 17(1) of the Conservation Rules, 1999. After considering the representation, the DMG considered the same and recorded that the lessee did not produce the subsequent orders of the Madras High Court and that during 1991-1992, 1994-1995 and 1995-1996 the petitioner did not operate the quarry. It was also observed that even after renewal, the petitioner produced only seventy blocks with a total quantity of 70.405 cubic meters. Passingly, the DMG also noted that the Joint inspection team consisting of officials of Revenue Department and Mining Department, the petitioner was found to have dumped waste covering an extent of Acs.0.70 on the land, which was included in the prohibited order book.

A perusal of the order passed by DMG would not even remotely support the petitioner that the lease was determined for other reason, which was not found in the show cause notice. Concluding part of the order would show that after having noticed that the quarry is under non-working, that no authorised person was

available at the quarry site and no machinery was observed on the quarry site, DMG came to the conclusion that the lease area is not under operation and determined the lease. The first respondent while considering the appeal agreed with the conclusions and findings of the DMG and also rightly found that the Madras High Court did not prevent the petitioner for conducting quarrying operations and that the petitioner was only injuncted from removing the granite at the quarry pit. The GoAP considered all the objections raised by the petitioner and passed an elaborate order after due application of mind. A reading of the order of the original authority and appellate authority would dispel any suspicion that these orders were passed only to help the fourth respondent. Further except making allegation that the impugned order is vitiated by *mala fide* exercise of power, the officers and authorities in their personal capacity are not impleaded as party respondents and therefore the question of *mala fide* exercise of power cannot be gone into. Insofar as the finding of facts recorded by both the authorities is concerned, a reference to the explanation submitted by the petitioner on 27.12.2004, would be sufficient to belie any contention that the same is passed on non-existent grounds. The petitioner admitted all the contraventions, which were certainly entail in determination of the lease.

The writ petition, for the above reasons, is devoid of any merit and is accordingly dismissed. No costs.

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(**V.V.S.RAO, J**)

January 24, 2006.

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